SUPREME COURT NO. 98984-2

NO. 80154-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHELE HUNTLEY,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita L. Farris, Judge

PETITION FOR REVIEW

DAVID B. KOCH
Attorney for Petitioner

NIELSEN KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

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A. IDENTITY OF PETITIONER

Michele Huntley, the appellant below, asks this Court to review the Court of Appeals opinion referred to in section B.

B. COURT OF APPEALS DECISION

Huntley requests review of the Court of Appeals decision in State v. Huntley, COA No. 80154-6-I, filed August 3, 2020 (attached as an appendix).

C. ISSUES PRESENTED FOR REVIEW

Is review appropriate under RAP 13.4(b)(2) where the Court of Appeals decision conflicts with prior published decisions from that Court?

D. STATEMENT OF THE CASE

1. Superior Court

In a multi-count information, the Snohomish County Prosecutor's Office charged Michele Huntley with Theft, Identify Theft, and Forgery, alleging that over the course of 7 years, she stole approximately $2 million while serving as bookkeeper for an Everett roofing company. CP 117-127.

A deal was struck, and on November 18, 2018, Huntley pleaded guilty to Theft in the First Degree (including aggravating circumstances of abuse of trust and major economic offense); Identify Theft in the First

Degree; and six counts of Theft in the Second Degree. CP 64-93; 1RP[1] 1-8. Sentencing was scheduled for Tuesday, January 22, 2019 before the Honorable Anita Farris. 1RP 8.

On Friday, January 18, defense counsel filed a sentencing memorandum that, with attachments, totals 33 pages and includes a newspaper article about a similar case, a psychological assessment, a letter to the court from Huntley, and 9 additional letters to the court from individuals who knew Huntley in various ways. CP 31-63. At the time of filing, defense counsel also hand delivered working copies of these materials to Judge Farris's chambers. 2RP 5-6.

At the sentencing hearing the following Tuesday, the prosecutor first confirmed that Judge Farris had received the State's sentencing memorandum before recommending a high end standard range sentence of 57 months and asking the court to accept an agreed restitution order for $1,983,521.41. 2RP 4; CP 128-138. When the prosecutor turned her attention to the defense sentencing materials, Judge Farris interrupted and said she had not received any materials from the defense. 2RP 5.

Judge Farris indicated the situation was likely a result of the court's mistake, and defense counsel provided another copy of the

[1] This petition refers to the verbatim report of proceedings as follows: 1RP – November 13, 2018; 2RP – January 22, 2019.

materials. 2RP 6. Defense counsel described the packet as "pretty substantial." 2RP 6. When Judge Farris suggested taking a recess to review the materials, defense counsel warned a longer recess might be necessary, which would not be possible that day given defense counsel's obligations in other cases. 2RP 6. Judge Farris decided to take the recess immediately and then resume the hearing. 2RP 6.

The recess lasted 19 minutes. 2RP 7 ("Recess taken from 1:11 P.M. to 1:30 P.M."). The prosecutor continued with her recommendation and argument, and the court then heard from the owner of the roofing business, Kim Henderson. 2RP 7-14. When it was defense counsel's turn to speak, counsel expressed hope that Judge Farris had looked at the materials she submitted and lamented the fact Judge Farris had not had them earlier. 2RP 14. Judge Farris indicated she had "read them all." 2RP 14.

Despite Judge Farris's assurance, it became apparent she had not understood or retained all pertinent information. The defense sentencing memorandum noted on its first page that Huntley previously had a romantic relationship with Kim Henderson. See CP 31. Had Judge Farris *carefully* reviewed the accompanying materials, she would have known that Huntley and Henderson met in 1997 and their romantic relationship

was over by 2009. See CP 45 (together as couple for 12 years). Judge Farris nonetheless asked Henderson if he and Huntley were still living together when the crimes were discovered in 2014. 2RP 13. Her question shows that, in her quick review of the defense materials, she overlooked the very information she sought.[2]

After argument from defense counsel and comments from Huntley, Judge Farris agreed with the prosecutor's recommendation and imposed 57 months.[3] 2RP 14-17; CP 15, 17.

2. Court of Appeals

On appeal, Huntley argued that sentencing statutes and established case law require consideration of an individual's personal situation and individual circumstances when imposing sentence. And although Judge Farris indicated she had read all of the sentencing materials submitted on Huntley's behalf, 19 minutes did not provide sufficient time to review, retain, and properly consider the significant relevant information in the psychological evaluation and the many letters from those who knew her. See Brief of Appellant, at 5-8; Reply Brief of Appellant, at 1-5.

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[2] In response to Judge Farris's question, Henderson said the romantic relationship ended in 2006. 2RP 13. Whether ending 2009 or 2006, however, Judge Farris should have already known the answer to her question.

[3] On July 7, 2020, Judge Farris released Huntley from prison on bail pending appeal based, in part, on an underlying medical condition that increases her risk associated with Covid-19.

The Court of Appeals held that "[n]o particular amount of time is required for a court's consideration of sentencing materials when the record shows it reviewed them." Appendix, at 1. The Court concluded that Judge Farris's statement she had reviewed all materials, combined with the fact Judge Farris was clearly aware of at least some of the information contained in those materials, demonstrated she had not erred. Appendix, at 3. The Court of Appeals did not mention Judge Farris's question to Henderson about whether he and Huntley were still together in 2014, a question rendered unnecessary by information in the sentencing materials. The Court of Appeals also deemed case law cited in Huntley's brief not germane. Appendix, at 3.

Huntley now seeks this Court's review.[4]

E. ARGUMENT

THE COURT OF APPEALS' DECISION CONFLICTS WITH SENTENCING STATUTES AND PRIOR DECISIONS BY THAT COURT.

Sentencing statutes and court rules expressly contemplate consideration of a defendant's personal situation and individual circumstances. See, e.g., RCW 9.94A.500 (requiring a broad array of information at sentencing, including evaluations and reports, statements,

and arguments from various interested parties, including defense counsel); CrR 7.1 (addressing reports that may be ordered and considered). The failure to base the length of punishment on an individual's particular circumstances is an abuse of discretion. Brunson v. Pierce County, 149 Wn. App. 855, 861, 205 P.3d 963 (2009); see also State v. Landsiedel, 165 Wn. App. 886, 889, 269 P.3d 347 (failure to consider an authorized sentence abuse of discretion), review denied, 174 Wn.2d 1003, 278 P.3d 1111 (2012).

The defense sought a low end standard range sentence for Huntley – one that would have required 14 fewer months in prison than the high end sentence ultimately imposed. CP 15, 32; 2RP 15. Defense counsel therefore submitted a sentencing memo containing extensive and important information constituting the primary means by which to convince Judge Farris this was a fair and appropriate resolution.

Included within the psychological assessment submitted by counsel is detailed information concerning Huntley's relationship with her former employer; family, academic, and work history; her history of traumatic abuse; her medical history; and discussions concerning her mental health, including test assessments, results, diagnoses, and forensic opinions. The

[4] The Court of Appeals did remand to strike community custody supervision fees and to clarify the deadline for Huntley to pay her legal financial obligations. Appendix,

report is 8 pages, single-spaced, and typed. It is filled with pertinent information. See CP 36-43.

The report is followed by a letter from Huntley and letters from 9 others who have known Huntley at different times and in different settings (a caregiver for her father; a daughter; a longtime friend of the family familiar with her parenting skills and the effects of incarceration; a cousin who had known Huntley her entire life; a former co-worker; a woman who had long considered Huntley family; Huntley's older sister; a television reporter who described Huntley as a second mother; and Huntley's parents). The letters – like the psychological assessment – are single spaced and typed. They comprise 17 pages and are full of information concerning Huntley's life, deeds, and prospects for the future. See CP 45-61.

In response to concern expressed by defense counsel, Judge Farris did indicate that she had read all the materials. 2RP 14. Whatever Judge Farris meant, 19 minutes was insufficient time to both read the defense memo and also carefully read and consider the entirety of the lengthy psychological assessment. And it was certainly insufficient time to read the memo, fully and carefully consider the assessment, *and then* read the many letters of support submitted by the defense. These materials were relevant, important, and deserved full and careful review before sentence was

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at 3-4. Huntley does not challenge these decisions.

imposed, even if that required a longer recess or continuation of the hearing to another day.

Huntley is not suggesting that Judge Farris did not read the materials presented. She read them very quickly. Huntley's point is that 19 minutes did not provide sufficient time to review, retain, and properly consider the significant relevant information in the psychological evaluation and the many letters from those who knew her. And given the 14-month disparity between the high-end sentence Huntley received and the low-end sentence she sought, this was an important hearing for her. She deserved more than an unnecessarily hurried look at her materials.

The Court of Appeals deemed Brunson v. Pierce County and State v. Landsiedel not "germane" by distinguishing them on their facts and held that "[n]o particular amount of time is required for a court's consideration of sentencing materials when the record shows it reviewed them." Appendix, at 3. But Huntley cited Brunson and Landsiedel – not for factual similarity – for the legal proposition in each; i.e., a sentencing court abuses its discretion when it fails to base punishment on an individual's particular circumstances. The Court of Appeals decision in Huntley's case conflicts with these decisions in that respect. Moreover, the Court of Appeals is wrong when it indicates no particular amount of time is necessary for a court to consider sentencing materials. A sentencing court must devote

sufficient time to review, understand, and apply the defendant's individual circumstances within the court's sentencing discretion. That did not happen in Huntley's case.

A court's failure at sentencing to consider information it should have is reversible error. State v. Brown, 178 Wn. App. 70, 80-85, 312 P.3d 1017 (2013), review denied, 180 Wn.2d 1004, 321 P.3d 1206 (2014). Huntley respectfully requests a new and fair sentencing hearing before a different judge. Review is appropriate under RAP 13.4(b)(2).

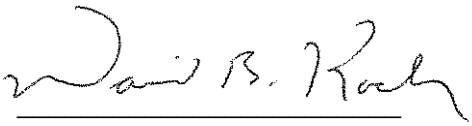
F. CONCLUSION

Michele Huntley respectfully asks this Court to grant her petition and reverse the Court of Appeals.

DATED this 2ND day of September, 2020.

Respectfully submitted,

NIELSEN KOCH, PLLC



DAVID B. KOCH, WSBA No. 23789
Office ID No. 91051
Attorneys for Petitioner

APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. MICHELE LYNN HUNTLEY, Appellant.	)	No. 80154-6-I UNPUBLISHED OPINION

VERELLEN, J. — No particular amount of time is required for a court's consideration of sentencing materials when the record shows it reviewed them. Because the record shows the court considered all sentencing materials presented to it before sentencing Michele Huntley, it did not err. But because the record shows the court intended to strike all discretionary legal financial obligations (LFO) from the judgment and sentence and did not do so, a limited remand for a ministerial hearing is appropriate. And because it is unclear whether the court made a scrivener's error regarding how long Huntley had to pay restitution and for the sake of judicial economy, clarification of this issue is also appropriate on remand.

Therefore, we affirm in part and remand for proceedings consistent with this opinion.

FACTS

Huntley pleaded guilty to eight criminal charges from her theft of almost $2,000,000 from her employer. Several days before sentencing, defense counsel delivered her sentencing memorandum to the State and courthouse, but the judge did not receive it until the hearing had begun. The judge called a recess and reviewed the entire memorandum. After argument from the State and defense counsel, a statement from Huntley's former employer, and an allocution with Huntley, the court sentenced her to 57 months incarceration at the high end of the standard range. The court imposed this sentence "mostly because of the sophisticated nature and long-term time period that the crime spanned."[1] The court required that Huntley pay restitution to her victim and pay mandatory LFOs only.

Huntley appeals.

ANALYSIS

The Sentencing Reform Act of 1984 does not allow appeal of the length of any sentence within the standard range, but a defendant can appeal the procedures followed when the court imposed a standard-range sentence.[2] Huntley argues the court erred by not giving sufficient consideration to the 33-page

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[1] Report of Proceedings (Jan. 22, 2019) at 21.

[2] State v. Ammons, 105 Wn.2d 175, 182-83, 713 P.2d 719 (1986); RCW 9.94A.585(1).

defense sentencing memorandum because the judge took a recess of 19 minutes to review it.[3]

The court reported reviewing the entire sentencing memorandum. This is sufficient to rebut Huntley's argument, and the court's questions during sentencing provide additional support. For example, the court considered when to set Huntley's prison report date by asking if her father's last cancer treatment was on February 21, 2019, which was in appendix C on page 18 of the sentencing memorandum. And the court clearly considered Huntley's request from page 15 of the memorandum "to please grant me to be able to finish treatment with my father" by setting February 25, 2019 as her report date. Because the record shows the court considered all materials presented for sentencing, it did not err.

Huntley argues the court erred by imposing mandatory LFOs when she is indigent. Specifically, she contends any supervision fees imposed by the Department of Corrections constitute a mandatory LFO prohibited by

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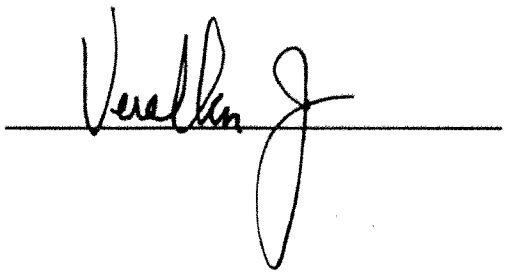
[3] Huntley also argues the court abused its discretion by "fail[ing] to base the length of punishment on an individual's particular circumstances." Appellant's Br. at 6 (citing Brunson v. Pierce County, 149 Wn. App. 855, 861, 205 P.3d 963 (2009); State v. Landsiedel, 165 Wn. App. 886, 889, 269 P.3d 347 (2012)). Neither case is apt. In Brunson, the court considered whether a hearing officer erred when she suspended three women of their professional licensures and refused to consider a suspension of less than one year. 149 Wn. App. at 858-60. And the proposition Huntley cites from Brunson was based on State v. Pettitt, 93 Wn.2d 288, 294-96, 609 P.2d 1364 (1980), a case considering whether a prosecutor abused his discretion by filing charges without considering mitigating factors. Landsiedel analyzed whether a court's failure to consider a proposed sentencing alternative required resentencing. 165 Wn. App. at 886. Neither case is germane to the circumstances here.

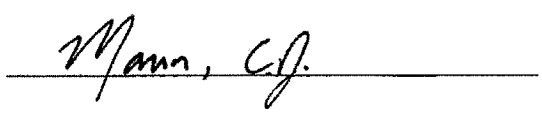
RCW 10.101.010. Because supervision fees are discretionary,[4] we accept the State's concession that remand is appropriate for a ministerial hearing regarding these fees.

Huntley argues the court made a scrivener's error when it wrote she had five years to repay her LFOs and restitution after saying during sentencing that she would have 10 years to do so. On this record, it is inconclusive whether the court made a scrivener's error or changed its decision. But because remand is necessary and for the sake of judicial economy, clarification on this issue is appropriate on remand.

Therefore, we affirm Huntley's sentence and remand for proceedings consistent with this opinion.



WE CONCUR:



[4] State v. Dillon, 12 Wn. App. 2d 133, 152, 456 P.3d 1199, review denied, 195 Wn.2d 1022 (2020).

NIELSEN KOCH P.L.L.C.

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